

# Calendar No. 1042

91ST CONGRESS }  
2d Session }

SENATE

{ REPORT  
No. 91-1035

## S. SGT. LAWRENCE F. PAYNE

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JULY 24, 1970.—Ordered to be printed

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Mr. EASTLAND, from the Committee on the Judiciary,  
submitted the following

### REPORT

[To accompany H.R. 14619]

The Committee on the Judiciary, to which was referred the bill (H.R. 14619) for the relief of S. Sgt. Lawrence F. Payne, U.S. Army (retired), having considered the same, reports favorably thereon, without amendment, and recommends that the bill do pass.

#### PURPOSE

The purpose of the bill is to relieve S. Sgt. Lawrence F. Payne, U.S. Army (retired) of liability for repayment to the United States of the sum of \$2,032.65, representing the amount of overpayment of retired pay he received as the result of an error on the part of the Government.

#### STATEMENT

The Department of the Army has no objection to the enactment of the bill. The Comptroller General in its report advises that the indebtedness involves a matter of policy for the Congress to decide.

In its favorable report on the bill, the Department of the Army set forth the facts of the case as follows:

Department of the Army records disclose that Lawrence F. Payne enlisted in the Army on December 10, 1935. At the time of his retirement in the grade of sergeant (E-5) on November 1, 1958, he had completed 22 years and 1 day of service for

basic pay purposes and 20 years and 1 day of active Federal service. Under the provisions of section 3991 of title 10, United States Code, Sergeant Payne was entitled to retired pay computed at  $21\frac{1}{2}$  percent of the active duty basic pay of the grade in which he retired, multiplied by the number of years of active Federal service completed at the time of retirement. Through an administrative error, the service for basic pay was used as the multiplier. On October 30, 1968, Sergeant Payne was advanced on the retired list to the grade of staff sergeant (E-7) under the provisions of section 3964 of title 10, United States Code. His retired pay continued to be computed on the erroneous basis. By letter dated April 1, 1969, Sergeant Payne was advised by the Chief, Retired Pay Division, that his retired pay had been computed at 55 percent of active duty basic pay with over 22 years of service instead of 50 percent of active duty basic pay with over 22 years of service for the period November 1, 1958, through February 28, 1969. This error resulted in a total overpayment of \$2,033.26. In May 1969 Sergeant Payne began refunding the overpayment at the rate of \$10 a month.

Overpayment to Sergeant Payne was caused solely by Department of the Army administrative error, and there is no indication of fraud, misrepresentation, fault, or lack of good faith on his part or any person acting in his behalf.

The cost of this bill, if enacted, will be \$2,033.26.

The Bureau of the Budget advises that, from the standpoint of the administration's program, there is no objection to the presentation of this report for the consideration of the committee.

The committee believes that the bill is meritorious and recommends it favorably.

Attached and made a part of this report are (1) a letter, dated March 3, 1970, from the Department of the Army, and (2) a letter dated February 18, 1970, from the Comptroller General of the United States.

DEPARTMENT OF THE ARMY,  
Washington, D.C., March 3, 1970.

Hon. JAMES O. EASTLAND,  
*Chairman, Committee on the Judiciary,*  
*U.S. Senate.*

DEAR MR. CHAIRMAN: Reference is made to your request for the views of the Department of the Army on S. 2714, 91st Congress, a bill for the relief of S. Sgt. Lawrence F. Payne, U.S. Army (retired).

This bill would relieve S. Sgt. Lawrence F. Payne, U.S. Army (retired), from liability for repayment to the United States the sum of \$2,033.26, representing overpayment of retired pay received for the period November 1, 1958, through February 28, 1969, because of an administrative error.

The Department of the Army is not opposed to the bill.

Department of the Army records disclose that Lawrence F. Payne enlisted in the Army on December 10, 1935. At the time of his retirement in the grade of sergeant (E-5) on November 1, 1958, he had completed 22 years and 1 day of service for basic pay purposes and 20 years

and 1 day of active Federal service. Under the provisions of section 3991 of title 10, United States Code, Sergeant Payne was entitled to retired pay computed at 2½ percent of the active duty basic pay of the grade in which he retired, multiplied by the number of years of active Federal service completed at the time of retirement. Through an administrative error, the service for basic pay was used as the multiplier. On October 30, 1968, Sergeant Payne was advanced on the retired list to the grade of staff sergeant (E-7) under the provisions of section 3964 of title 10, United States Code. His retired pay continued to be computed on the erroneous basis. By letter dated April 1, 1969, Sergeant Payne was advised by the Chief, Retired Pay Division, that his retired pay had been computed at 55 percent of active duty basic pay with over 22 years of service instead of 50 percent of active duty basic pay with over 22 years of service for the period November 1, 1958, through February 28, 1969. This error resulted in a total overpayment of \$2,033.26. In May 1969, Sergeant Payne began refunding the overpayment at the rate of \$10 a month.

Overpayment to Sergeant Payne was caused solely by Department of the Army administrative error, and there is no indication of fraud, misrepresentation, fault, or lack of good faith on his part or any person acting in his behalf.

The cost of this bill, if enacted, will be \$2,033.26.

The Bureau of the Budget advises that, from the standpoint of the administration's program, there is no objection to the presentation of this report for the consideration of the committee.

Sincerely,

STANLEY R. RESOR,  
*Secretary of the Army.*

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COMPTROLLER GENERAL OF THE UNITED STATES,  
*Washington, D.C., February 18, 1970.*

B-168776.

Hon. EMANUEL CELLER,  
*Chairman, Committee on the Judiciary,*  
*House of Representatives.*

DEAR MR. CHAIRMAN: Further reference is made to your letter of January 8, 1970, requesting a report on H.R. 14619, 91st Congress, a bill for the relief of S. Sgt. Lawrence F. Payne, U.S. Army (retired).

The bill would relieve Sergeant Payne of all liability for repayment to the United States of the sum of \$2,033.26, representing the amount of overpayment of retired pay he received from November 1, 1958, through February 28, 1969, as the result of an error in the computation of the retired pay to which he was entitled, and would authorize the repayment to him of the sum of any amount[s] received or withheld from him on account of such overpayment. The bill also would authorize full credit in the audit and settlement of the account of any certifying or disbursing officer of the United States for the amount for which liability would be relieved by the bill.

Sergeant Payne was retired under the provisions of 10 U.S.C. 3914 effective November 1, 1958, at which time he was credited with 20 years, 0 months, and 1 day of active service and 22 years, 0 months, and 1 day for basic pay purposes.

Public Law 85-422, 72 Stat. 122, effective June 1, 1958, reduced the maximum service for which increased pay increments were provided for pay grade E-5 from over 22 years' service to over 10 years' service. The maximum monthly basic pay rate for pay grade E-5 under that law (based on over 10 years' service) was \$240 as compared with \$257.50 under the law in effect on May 31, 1958 (based on over 22 years' service), and \$241.80 (based on over 18 years' service). On June 1, 1958, the effective date of Public Law 85-422, Sergeant Payne was entitled to basic pay at the rate of \$241.80 as a member with over 18 years' service under the saved pay provisions of section 10 of Public Law 85-422, and his basic pay was so computed through October 31, 1958.

His retired pay should have been computed on the basis of 20 years' active service, 2½ percent for each year of service; that is, 50 percent of the active duty pay to which he was entitled at the time of his retirement, or \$120.90. Instead, his retired pay was computed on the basis of the active duty pay rate applicable on May 31, 1958, to pay grade E-5 with over 22 years' service, or \$257.50, increased by 6 percent, the amount of increase in retired pay authorized by Public Law 85-422 for retired members who were entitled to retired pay on May 31, 1958. Subsequent percentage increases in retired pay were computed on that basis.

Sergeant Payne was advanced on the retired list to the grade of staff sergeant (E-6) effective October 30, 1968, under the provisions of 10 U.S.C. 3964 and was paid retired pay at the monthly rate of \$188.39 effective on that date.

In summary, Sergeant Payne's overpayment of retired pay was computed by the Army Finance Center as follows:

Period	Due	Paid	Overpaid	Months	Amount
Nov. 1, 1958, to Sept. 30, 1963	\$120.90	\$136.48	\$15.58	59	\$919.22
Oct. 1, 1963, to Aug. 31, 1965	126.95	143.30	16.35	23	376.05
Sept. 1, 1965, to Nov. 30, 1966	132.54	149.61	17.07	15	256.05
Dec. 1, 1966, to Mar. 31, 1968	137.44	155.15	17.71	16	283.36
Apr. 1, 1968, to Oct. 31, 1968	142.80	161.20	18.40	7	128.80
Oct. 30, 1968	.34	.91	.57		.57
Nov. 1, 1968, to Jan. 31, 1969	171.26	188.39	17.13	3	51.39
Feb. 1, to Feb. 8, 1969	178.11	195.93	17.82	1	17.82
Total overpayment					2,033.26

There was due Sergeant Payne for October 30, 1968, however, the difference between \$171.26 and \$142.80 for 1 day, or \$0.95 for that day. Since the Army Finance Center concluded that he was entitled to only \$0.34 for that day, he is due an additional \$0.61. Therefore, the total overpayment amounted to \$2,032.65 rather than to \$2,033.26. If favorable consideration is given the bill, it should be amended accordingly.

The sum of \$10 a month was deducted from Sergeant Payne's retired pay beginning May 1, 1969, resulting in the total amount of \$90 collected through January 31, 1970.

We have pointed out in connection with prior relief bills similar to H.R. 14619 that overpayments of pay or retired pay do occur from time to time in individual cases and that the Congress has recognized the right of the Government and the duty of the ac-



countable officers of the Government to recoup such overpayments directly from active duty or retired pay. See 5 U.S.C. 5514. We believe that such statutory provisions were intended to have uniform application to all members of the uniformed services and that private relief bills of this nature tend to encourage all others who are overpaid to seek similar relief from liability to refund the overpayment without regard to applicable provisions of law.

While the question of whether Sergeant Payne should be relieved of his indebtedness involves a matter of policy for the Congress to decide, it should be noted that many members of the Armed Forces who have been overpaid because of an administrative error have been required to refund such overpayments. Also, enactment of legislation of this type discriminates against the thousands of members who are properly paid. We are not aware of any particular circumstances which would warrant passage of a private relief bill in favor of Sergeant Payne. Accordingly, we do not recommend favorable consideration of H.R. 14619.

Sincerely yours,

R.F. KELLER,  
*Assistant Comptroller General of the United States.*

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